



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Application No.	Serial No.	Class	Subclass	Section
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MORGAN, LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19103-2921

Attorney

DECTOUN, AMY M

Agent	Address
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Please find below and or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/487,979

Applicant(s)

SKURKOVICH ET AL.

Examiner

Amy M. DeCloux

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on 11 December 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): The 112 first paragraph enablement rejection.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 42 and 46.Claim(s) withdrawn from consideration: 45 and 48-50.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The 112 first paragraph written description rejection and 103 rejection are maintained essentially for the reasons of record. The 112 first written description is maintained because said rejection states that there is written support only antibody fragments with antigen binding sites. It is noted that biologically active fragments of said antibodies do not necessarily comprise antigen binding fragments. The 103 rejection is maintained because the claims must be interpreted in their broadest sense. Accordingly, it is the Examiner's position that a method of treatment of AIDS comprises a method of preventing said disease. Applicant contends that the referenced method of administering gamma interferon antibodies into a mouse model of AIDS to treat MAIDS does not offer one of skill a reasonable expectation of success given the dissimilarity of MAIDS and AIDS. However, it is the Examiner's position that Applicant acknowledges that said mouse model is a model for human AIDS and therefore one of skill would have a reasonable expectation of success, despite the differences in said diseases absent evidence to the contrary, and the examiner further notes that the instant claims do not claim a single species of patient. Applicant also contends that the skilled artisan would find no motivation or suggestion to apply the teachings of Probert to the treatment of AIDS, but only to TNF alpha mediated neuronal demyelination. However it is the Examiner's position that because Probert teaches that TNF alpha has been implicated in AIDS and as a major factor in immune mediated demyelination, and that a neutralizing antibody directed against TNFalpha completely prevented demyelination, Probert does suggest to one of skill to administer a TNF specific neutralizing antibody for the treatment of AIDS dementia. Applicant further contends that Skukovich does not offer any suggestion or motivation to combine the three recited antibodies in a method of treating AIDS. However, the Examiner does not state that the Skurkovich reference by itself provides said motivation or suggestion, because the motivation is derived from In re Kerkhoven. Therefore the rejection is maintained, essentially for the reasons of record. It is also noted that the references contained in the supplemental IDS are not being considered after-final, as there was not presented any good and sufficient reason why they were not presented earlier.

Pat J. Nolan
PATRICK J. NOLAN, PH.D.
PRIMARY EXAMINER

1/12/03